

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

SARAH W. BROWN,  
Plaintiff,  
  
v.  
  
MICHAEL J. ASTRUE,  
Commissioner of Social Security  
Defendant.

Case No. 10-cv-04826 NC

# **ORDER RE: CROSS-MOTIONS FOR SUMMARY JUDGMENT; REMANDING CASE TO SOCIAL SECURITY COMMISSIONER**

Re: Docket Nos. 30, 31

MICHAEL J. ASTRUE,  
Commissioner of Social Security,  
Defendant.

Plaintiff Sarah W. Brown seeks judicial review of the Commissioner of Social Security's final decision denying plaintiff's claim for benefits as either a "wife" or "divorced wife" under Title II of the Social Security Act. Both parties move for summary judgment. The central issue presented is whether Social Security's denial of benefits was based on substantial evidence and was free of legal error.

Because the Commissioner's conclusion was supported by substantial evidence and was free of legal error, the Court GRANTS SSA's motion for summary judgment as to denial of "divorced wife" benefits. As to the denial of "wife" benefits, however, the Court finds this decision was not free of legal error. Accordingly, the Court DENIES both parties' motions for summary judgment with regard to "wife" benefits and remands the case to the Commissioner to redetermine whether plaintiff was validly married at the time she filed her benefits application.

## I. BACKGROUND

#### A. Agency Review

On April 4, 2007, plaintiff filed an application for wife's old-age insurance benefits on the record of wage earner Holmes C. Brown. (AR 17, 21.) In her application, plaintiff stated that she married Mr. Brown on July 22, 1964, and that, while a divorce had been granted in 1974, the divorce had thereafter been ruled invalid. (AR 17, 20-21.) Accordingly, plaintiff claimed, she remained married to Mr. Brown. (AR 17, 21.)

On May 21, 2007, the SSA denied plaintiff's request for the old-age benefits associated with Mr. Brown. (AR 22.) The SSA concluded that because plaintiff was not validly married to Mr. Brown at the time she filed her application, she was not entitled to benefits. (*See* AR 22.) The SSA explained that despite plaintiff having "filed cases in court to have this divorce declared void," plaintiff failed to submit proof that any court had found in her favor.<sup>1</sup> *Id.* Such proof, the SSA advised, would be required in order for plaintiff to receive wife's benefits. *Id.*

Having determined that plaintiff's marriage ended in divorce, the SSA considered plaintiff's eligibility as a divorced wife. *Id.* For such purposes, a "divorced wife" is a woman divorced from an insured individual, but only if she had been married to that individual "for a period of 10 years immediately before the date the divorce became effective." 42 U.S.C. § 416(d)(1). The SSA found that plaintiff married Brown in July 1964, and that the marriage subsequently ended by divorce in December 1973. (AR 22.) As such, plaintiff's marriage did not meet the statutorily required ten-year minimum. *Id.* Accordingly, the SSA found her ineligible for benefits as a divorced wife. *Id.*

On plaintiff's request for reconsideration, SSA reviewed plaintiff's claim for benefits under the "divorced wife" standard. (AR 26.) It concluded she was ineligible

<sup>1</sup> Plaintiff states that “[t]he divorce granted on or before 06/27/1974 was ruled invalid by John E. Conway, Chief United States District Judge.” (AR 17, 21.) This is not correct. Plaintiff misinterprets a statement by Judge Conway, made while reviewing the facts in the light most favorable to Plaintiff, as a finding of fact or holding. *See Am. Compl.* at 10, Dkt. No. 13; *see also* Pl.’s Mot. Summ. Judg. at 2, Dkt. No. 30.

1 for “divorced wife” benefits because the marriage did not last ten years. (AR 26.)

2 **B. Administrative Review**

3 Plaintiff next sought administrative review of the agency’s decision. (AR 244-93.)  
 4 At a February 26, 2008 hearing before Administrative Law Judge Alberto E. Gonzalez,  
 5 plaintiff maintained that she remained married to Mr. Brown and, therefore, that the SSA  
 6 improperly construed her claim as one for divorced wife’s benefits. (AR 278.)

7 **1. Plaintiff’s Claims**

8 At the hearing, plaintiff alleged that the interlocutory divorce decree granted in  
 9 December of 1973 (and made final in June of 1974) was void for lack of personal  
 10 jurisdiction. (AR 262-77.) The crux of plaintiff’s argument was that during the time of  
 11 the divorce proceedings initiated by Mr. Brown in the District of Columbia, plaintiff was  
 12 undergoing psychiatric care overseas and had no knowledge of, and did not participate in,  
 13 the proceedings. (AR 13.) Plaintiff claimed that procedural defects in the divorce decree  
 14 constituted “substantive legal errors of fraudulent dimension,” rendering the divorce  
 15 decree invalid. (Pl.’s Am. Compl. at 4; AR 262-77.) Plaintiff asserted that she therefore  
 16 remained validly married to Mr. Brown. (AR 278.)

17 **2. ALJ’s Findings**

18 On April 23, 2008, the ALJ issued its decision, finding that plaintiff and Mr.  
 19 Brown were married on July 22, 1964 and became divorced on June 27, 1974 by virtue of  
 20 the interlocutory divorce decree issued six months earlier. (AR 12-13.) The ALJ  
 21 therefore analyzed plaintiff’s claim according to the eligibility requirements of a divorced  
 22 spouse and concluded that benefits were properly denied because at the time the divorce  
 23 became final, plaintiff and Mr. Brown had been married for one month short of the ten-  
 24 year requirement. (AR 13.) The ALJ explained that analyzing plaintiff’s claim as one for  
 25 divorced spouse’s benefits was the appropriate course because consideration of her status  
 26 as the insured’s wife would require review of the divorce decree, which the ALJ  
 27 concluded it lacked authority to do. (AR 13-14.) The ALJ made this determination for  
 28 the following reasons: (1) under Supreme Court precedent, federal courts do not have

1 jurisdiction over divorce decrees (AR 13.); (2) no case law supports the proposition that  
 2 the ALJ has authority to review or overturn a divorce decree (AR 14.); (3) plaintiff  
 3 unsuccessfully argued the alleged invalidity of the divorce decree to multiple federal  
 4 courts (AR 13-14.); and (4) the SSA's regulations make clear that the ALJ's authority is  
 5 limited to reviewing administrative actions, i.e., initial determinations made by the SSA,  
 6 which the divorce decree was not. (AR 14.) The ALJ's decision became final on July 30,  
 7 2010 when the SSA Appeals Council denied plaintiff's request for review. (AR 3-6.)

## 8           **II. STANDARD OF REVIEW**

9           A district court has the "power to enter, upon the pleadings and transcript of the  
 10 record, a judgment affirming, modifying, or reversing the decision of the Commissioner  
 11 of Social Security, with or without remanding the case for a rehearing." 42 U.S.C. §  
 12 405(g). The Commissioner's decision "should only be disturbed if it is not supported by  
 13 substantial evidence or it is based on legal error." *Hermes v. Sec'y of HHS*, 926 F.2d 789,  
 14 790 (9th Cir. 1991) (quotations and citation omitted). The ALJ's determinations of law  
 15 are reviewed de novo, although deference is owed to a reasonable construction of the  
 16 applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

17           While a reviewing court's task is typically limited to determining whether the  
 18 Commissioner's decision is supported by substantial evidence, it is equally important for  
 19 the court to ensure that proper legal standards were applied. *See Benitez v. Califano*, 573  
 20 F.2d 653, 655 (9th Cir. 1978). Where a reviewing court determines that the  
 21 Commissioner's findings are in fact not free of legal error, "[r]emand for further  
 22 administrative proceedings is appropriate if enhancement of the record would be useful."  
 23 *Benecke v. Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004).

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### III. DISCUSSION

#### **A. Entitlement to Wife's Benefits**

**1. The ALJ Improperly Relied on Supreme Court Precedent that Has No Application to Plaintiff’s Case**

In order to receive old-age benefits as the wife of an insured wage earner, a claimant must be the “wife” of the insured as defined by the Act and its regulations. See 42 U.S.C. §§ 402(b); 416(b), (h)(1)(A). Under 42 U.S.C. § 416(h)(1)(A), one’s status as a wife is determined by the law of the state in which the insured is domiciled at the time the application is filed. 42 U.S.C. § 416(h)(1)(A). Specifically, for eligibility purposes, an applicant is considered the wife of the insured if courts of the state in which the insured is domiciled would find that the applicant and the insured were validly married at the time the application was filed. *Id.*

The ALJ relied upon *Marshall v. Marshall*, 547 U.S. 293 (2006); *Ankenbrandt v. Richards*, 504 U.S. 689 (1992); and *Barber v. Barber*, 62 U.S. 582 (1859) as support for the decision to decline review of plaintiff's divorce decree. (AR 13.) This decision constitutes legal error.

These cases concern the reach of two judicially-created exceptions to the exercise of federal diversity jurisdiction – the domestic relations and probate exceptions. *See Marshall*, 547 U.S. at 308. Specifically, the domestic relations exception strips federal courts of the power to issue divorce, alimony, and child custody decrees even though the parties may meet the amount in controversy and diversity requirements. *Ankenbrandt*, 504 U.S. at 703. Because this case involves the interpretation of federal law (the Social Security Act and its regulations), it arises within the context of the federal question jurisdiction statute, 28 U.S.C. § 1331, as opposed to the diversity jurisdiction statute, 28 U.S.C. § 1332.

As the Ninth Circuit explained in *Atwood v. Fort Peck Tribal Court Assiniboine*, 513 F.3d 943, 947 (9th Cir. 2008), the “domestic relations” exception is inapplicable to federal question cases. The court explained that, “[a]lthough *Ankenbrandt* did not address

1 whether the exception applies to the federal question jurisdiction statute, 28 U.S.C. §  
 2 1331, the [Supreme] Court’s reasoning plainly does not apply to that statute.” 513 F.3d at  
 3 947. The Ninth Circuit therefore aligned with the Fourth and Fifth Circuits in expressly  
 4 holding that “the domestic relations exception applies only to the diversity jurisdiction  
 5 statute.” *Id.* (citations omitted). As this case arises under the federal question jurisdiction  
 6 statute, the domestic-relations exception has no application here. In sum, the ALJ erred  
 7 as a matter of law in concluding that the court lacked jurisdiction to determine marital  
 8 status for purposes of assessing a party’s entitlement to social security benefits.

9           **2. The SSA May Review the Validity of a Divorce Decree for Purposes of  
 10 Establishing a Claimant’s Eligibility to Benefits**

11           The ALJ also erred in finding no law existed that supports the SSA’s review of the  
 12 effectiveness of plaintiff’s divorce decree. To the contrary, many courts have held that  
 13 while the SSA cannot “grant or rescind a divorce . . . it can determine marital status for  
 14 purposes of entitlement to social security benefits.” *Parker v. Sullivan*, 898 F.2d 578, 579  
 15 (7th Cir. 1990); *see also Slessinger v. Sec’y of Health & Human Servs.*, 835 F.2d 937, 941  
 16 (1st Cir. 1987); *Renshaw v. Heckler*, 787 F.2d 50 (2d Cir. 1986); *Chlystek v. Califano*,  
 17 599 F.2d 1270 (3d Cir. 1979); *Cain v. Secretary*, 377 F.2d 55 (4th Cir. 1967); *Sepulveda*  
 18 *v. Secretary*, 570 F. Supp. 1423, 1425 (D.P.R. 1983).

19           In *Parker*, for example, the Seventh Circuit held that, for purposes of determining  
 20 eligibility to social security benefits, the validity of a claimant’s marriage “depends not on  
 21 the contents of an ex parte order by a state trial court, but on what the highest court of the  
 22 state would do with that order if it were challenged by the method provided by the state  
 23 for such challenges.” 898 F.2d at 580-81 (citations omitted); *see also* 42 U.S.C. §  
 24 416(h)(1)(A)(I) (“An applicant is the wife, husband, widow, or widower of a fully or  
 25 currently insured individual for purposes of this subchapter if the courts of the State in  
 26 which such insured individual is domiciled at the time such applicant files an application .  
 27 . .”).

28           The court’s reasoning in *Parker* represents persuasive authority for the ALJ to

1 review the validity of a divorce decree for purposes of determining a claimant's eligibility  
 2 to social security benefits. The ALJ here correctly concluded that the SSA could not  
 3 invalidate Brown's divorce decree. Yet under the reasoning in *Parker*, the SSA could  
 4 assess the validity of Brown's divorce, applying Virginia law, in order to decide her  
 5 entitlement to benefits. The ALJ's failure to even consider the divorce decree's validity  
 6 was an error of law.<sup>2</sup>

#### **B. Entitlement to Divorced Wife's Benefits**

8 There is one issue that needs no further review. The ALJ's determination that  
 9 plaintiff is not entitled to benefits as a divorced wife (because her marriage lasted less  
 10 than ten years) is supported by substantial evidence and is free of legal error. Plaintiff  
 11 married Mr. Brown on July 22, 1964, and, if the decree is found to be valid, was divorced  
 12 on June 27, 1974. (AR 12-13, 124-25.) Substantial evidence exists to show that  
 13 Plaintiff's marriage ended nearly one month short of the requisite ten years. *See* 20  
 14 C.F.R. § 404.331.

15 Indeed, plaintiff expressly disavows any entitlement to benefits as a divorced wife.  
 16 *See* Pl.'s Mot. Req. Case Management Conf. at 18, Dkt. No. 32 ("I am not entitled to SSA  
 17 divorced spouse's retirement insurance benefits on my husband's record because my  
 18 husband and I are not divorced. I am seeking federal benefits as my husband's estranged  
 19 wife."). Accordingly, SSA's motion for summary judgment as to divorced spouse  
 20 benefits is GRANTED.

#### **IV. CONCLUSION**

22 To determine whether a claimant qualifies as a "wife" for eligibility purposes, the  
 23 SSA must determine whether the courts of the state in which the insured was domiciled at  
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25 <sup>2</sup> The SSA's Programs Operations Manual (POMS), the SSA's internal manual for  
 26 its employees, provides an administrative process for evaluating questionable divorce  
 27 decrees. *See, e.g.*, GN 00305.170B (where the validity of a divorce is questioned on  
 28 jurisdictional claims, the employee is to obtain a certified copy of the divorce decree and  
 to resolve such issues as "whether the defendant was given notice of the divorce  
 proceeding and how," and "whether the defendant filed an answer in the proceeding or  
 appeared in court.").

1 the time the application was filed would find that the claimant and the insured were  
2 validly married. The ALJ refused to consider plaintiff's application as one for wife's  
3 benefits, concluding that to consider her anything other than a divorced wife was beyond  
4 the ALJ's authority. This was legal error. Ultimately, the SSA may again conclude that  
5 plaintiff does not qualify as a "wife" for purposes of Social Security benefits. This  
6 conclusion, however, may only be reached after applying Virginia law to determine the  
7 validity of plaintiff's divorce decree.

8 Because the ALJ incorrectly declined to assess the validity of plaintiff's divorce  
9 decree, this case is remanded to the Commissioner. On remand, the Commissioner should  
10 determine whether Virginia courts would find that Ms. Brown's divorce decree is void,  
11 and therefore that she, for purposes of SSA benefits, was validly married to Mr. Brown at  
12 the time she filed her application.

13 For the foregoing reasons, the cross-motions for summary judgment as to "wife"  
14 benefits are DENIED. As to the divorced wife benefits, the Commissioner's summary  
15 judgment motion is GRANTED. This case is REMANDED to the Commissioner.  
16

17 IT IS SO ORDERED.

18  
19 DATED: March 20, 2012

  
NATHANAEL M. COUSINS  
United States Magistrate Judge